

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

JEFFREY C. DIX, et al.,

Plaintiffs,

v.

WILLIAM GRIFFIN, et al.,

Defendants.

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Case No. 2:11-CV-4174-MJW

DEFENDANTS' MOTION TO DISMISS,
ALTERNATIVE MOTION FOR A MORE DEFINITE STATEMENT

COME NOW Defendants, by and through the undersigned counsel, and move the Court pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure to dismiss plaintiffs' Complaint in this matter. Defendants move for dismissal on the following grounds:

1. Plaintiff Dix fails to state a federal claim for copyright infringement in Count VI and, upon dismissal of that claim, the pendent state law claims should be dismissed in accordance with Eighth Circuit and United States Supreme Court precedent.
2. Plaintiff Dix fails to state a claim in Count V because he is not a third-party beneficiary and because an agreement to negotiate in the future is unenforceable as a matter of law.
3. Plaintiffs fail to state a claim in Counts III and IV for quantum meruit because the allegations fail to meet the pleading requirements of *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 129 S. Ct 1937 (2009).
4. Plaintiffs fail to state a claim in Counts I and II for breach of contract because they fail to demonstrate a basis for contractual liability by any defendant for the alleged agreement between plaintiffs and a third-party, Clayton Graham and fail to satisfy the pleading requirements of *Twombly* and *Iqbal*.

5. Plaintiffs fail to state a claim in Counts I and II because those claims are necessarily barred either by the statute of limitations or the statute of frauds.

In addition or in the alternative, defendants move the Court pursuant to Rule 12(e) for an Order directing plaintiffs to make a more definite statements of their claims, in the following respects:

1. In Count VI, allegation of the specific conduct of each defendant that constitutes infringement as well as the specific acts of infringement and dates of the alleged conduct.

2. In Counts III and IV, pleading of specific facts regarding each defendant's alleged request for plaintiffs' services or acquiescence, identification of any purported agent acting for each defendant, the dates of services and of receipt of services or benefits and how each defendant was unjustly enriched by the alleged services provided by plaintiffs.

3. In Counts I and II, pleading the time of contracting, terms of contract, factual and legal basis for making each defendant liable on the purported verbal contract, the time of each performance of services, the factual basis for any claim of vicarious liability, identification of any agents acting for each defendant, if any, and facts demonstrating that the contract satisfies or is outside the applicable statute of frauds, if claimed.

4. A statement of all consideration received by the plaintiffs by any defendant for services allegedly performed in connection with the Lakeside Development.

Defendants' separately-filed Suggestions in Support of this motion and alternate motion are incorporated herein by reference.

WHEREFORE defendants pray the Court for its Order dismissing plaintiffs' Complaint, in the alternative ordering plaintiffs to make a more definite statement of their claims, and for such other and further relief as the Court deems just and proper.

Respectfully submitted,

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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was sent via either ECF or, for those not registered with ECF, by first class mail, postage prepaid, on this 27th day of September, 2011, to the following:

Jane C. Drummond
Schreimann, Rackers, Francka and Blunt, L.L.C.
2316 St. Mary's Boulevard, Suite 130
Jefferson City, MO 65109

s/ Matthew D. Turner

Matthew D. Turner